

Assembly Bill No. 1922

Passed the Assembly August 30, 2016

Chief Clerk of the Assembly

Passed the Senate August 25, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Sections 11658 and 11658.5 of the Insurance Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1922, Daly. Workers' compensation policies: ancillary agreements.

Existing law prohibits a workers' compensation insurance policy or endorsement from being issued by an insurer unless the insurer files a copy of the form or endorsement with a rating organization and 30 days have expired from the date the form or endorsement is received by the Insurance Commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or the endorsement prior to that time.

This bill would prohibit an ancillary agreement, as defined, to a workers' compensation insurance policy from being issued by an insurer to a California employer, as defined, unless the insurer files a copy of the ancillary agreement with a rating organization and 30 days have expired from the date the ancillary agreement is received by the commissioner from the rating organization without notice from the commissioner unless the commissioner gives written approval of the ancillary agreement prior to that time. The prohibition would not apply to an ancillary agreement between an insurer and a California employer issued in conjunction with a workers' compensation policy or endorsement that contains a deductible obligation or retrospectively rated loss limitation and meets specified criteria. The bill would authorize an insurer to use such an ancillary agreement and would require an insurer to submit a copy of that ancillary agreement to the commissioner within 30 days of issuing the ancillary agreement. The bill would provide that the terms and conditions of a workers' compensation policy and any endorsements take precedence over the provisions contained in an ancillary agreement in the case of an inconsistency or conflict between the policy or endorsement and the ancillary agreement. The bill would make additional changes relating to

collateral and security agreements, as defined. The changes made by the bill would apply to ancillary agreements issued or renewed on or after January 1, 2017. The bill would also make conforming changes.

The changes made by the bill would apply only until January 1, 2022.

The people of the State of California do enact as follows:

SECTION 1. Section 11658 of the Insurance Code is amended to read:

11658. (a) A workers' compensation insurance policy or endorsement shall not be issued by an insurer to any person in this state unless the insurer files a copy of the form or endorsement with the rating organization pursuant to subdivision (e) of Section 11750.3 and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or endorsement prior to that time.

(b) (1) An ancillary agreement shall not be issued by an insurer to a California employer unless the insurer files a copy of the ancillary agreement with the rating organization pursuant to subdivision (e) of Section 11750.3 and 30 days have expired from the date the ancillary agreement is received by the commissioner from the rating organization without notice from the commissioner unless the commissioner gives written approval of the ancillary agreement prior to that time.

(2) (A) Subdivision (a) and paragraph (1) of this subdivision do not apply to an ancillary agreement between an insurer and a California employer issued in conjunction with a workers' compensation policy or endorsement that contains a deductible obligation or retrospectively rated loss limitation equal to or greater than two hundred fifty thousand dollars (\$250,000), provided that, for an endorsement containing a deductible obligation, the endorsement complies with the requirements of subdivision (e) of Section 11735, or, for a retrospectively rated policy, is contained in an endorsement filed by a rating organization pursuant to Sections 11750.3 and 11753 and approved by the commissioner,

and the California employer meets at least three of the following criteria:

(i) Is represented by a broker for negotiations regarding the ancillary agreement and either has a full-time risk manager involved in the evaluation of an ancillary agreement or is represented by counsel during negotiations regarding an ancillary agreement.

(ii) Has 500 or more employees.

(iii) Has an annual nationwide payroll in excess of twenty million dollars (\$20,000,000).

(iv) Has a workers' compensation manual standard premium on a countrywide basis in excess of one million dollars (\$1,000,000).

(B) Paragraph (1) controls, and this paragraph does not apply to, an ancillary agreement between an insurer and a California employer that is either of the following:

(i) Issued pursuant to a coemployment arrangement, as defined in subdivision (g).

(ii) Negotiated, managed, or administered, in whole or in part, by a managing general agent (MGA), as defined in subdivision (c) of Section 769.81.

(3) An ancillary agreement shall not do either of the following:

(A) Amend or revise the coverage provided, any cancellation provision, any dispute resolution agreement, any premium or other costs, or the benefits payable, under a workers' compensation policy unless it is filed and approved in accordance with this section.

(B) Include charges or costs as allocated loss adjustment expenses that are not defined as allocated loss adjustment expenses in the California Workers' Compensation Uniform Statistical Reporting Plan - 1995, as identified in Section 2318.6 of Title 10 of the California Code of Regulations and any subsequent revisions, unless the ancillary agreement is filed and approved in accordance with this section.

(4) The terms and conditions of a workers' compensation policy and any endorsements shall take precedence over the provisions contained in an ancillary agreement if there is an inconsistency or a conflict between the policy or endorsement and the ancillary agreement.

(5) Contemporaneously with any written quote to provide workers' compensation coverage to a California employer, the insurer shall provide to the insurance agent or broker for the employer a draft of any ancillary agreement that the insurer reasonably expects to require the employer to sign, together with a notice that the terms of the ancillary agreement are negotiable between the insurer and the employer.

(6) An insurer may use and shall subsequently notify the insurance commissioner of an ancillary agreement described in paragraph (2) by providing a copy of the ancillary agreement to the commissioner within 30 days of the insurer issuing the ancillary agreement. The ancillary agreement shall not be subject to filing with the commissioner or rating organization or approval by the commissioner, but it shall be subject to all other authority granted to the commissioner under law.

(7) An ancillary agreement that is described in paragraph (2) shall include language stating that the ancillary agreement has not been filed with the rating organization or filed with, or approved by, the commissioner.

(8) This subdivision applies to ancillary agreements issued or renewed on or after January 1, 2017.

(c) If the commissioner notifies the insurer that a policy form, endorsement, or ancillary agreement does not comply with the requirements of law, specifying the reasons for his or her opinion, it is unlawful for the insurer to issue any policy form, endorsement, or ancillary agreement in that form.

(d) The withdrawal of a policy form, endorsement, or ancillary agreement by the commissioner pursuant to this section shall not affect the status of the policyholder as having secured payment for compensation or affect the substitution of the insurer for the policyholder in workers' compensation proceedings as set forth in the provisions of Chapter 4 (commencing with Section 3700) of Part 1 of Division 4 of the Labor Code during the period of time in which the policy form, endorsement, or ancillary agreement was in effect.

(e) The terms and provisions of collateral and security agreements shall be negotiated contemporaneously with the inception or renewal of the underlying policy, and any revisions or additions to those terms subsequent to the inception or renewal of the policy shall be mutually agreed upon by the parties.

(f) This section does not apply to limited policies submitted for approval to the commissioner pursuant to Section 11657.

(g) For purposes of this section, the following definitions apply:

(1) (A) “Ancillary agreement” means an agreement that is a supplementary writing or contract relating to a policy or endorsement form that adds to, subtracts from, or is inconsistent with the obligations of either the insured or the insurer under an insurance policy or endorsement.

(B) “Ancillary agreement” does not include any of the following:

(i) Limiting and restricting endorsements.

(ii) Customized limiting and restricting endorsements.

(iii) Collateral and security agreements.

(2) “California employer” means an employer whose principal place of business is in California and whose California payroll constitutes the majority of the employer’s payroll for purposes of determining premium under the policy.

(3) “Coemployment arrangement” means any arrangement, under contract or otherwise, whereby an entity utilizes the services of a third party to provide workers or human resources services for a fee or other compensation, including, but not limited to:

(A) A professional employer organization.

(B) A leasing employer, as defined in Section 606.5 of the Unemployment Insurance Code.

(C) A temporary services employer, as defined in Section 606.5 of the Unemployment Insurance Code.

(D) Any employer, regardless of name or form of organization, that is in the business of providing workers to other employers.

(4) “Collateral and security agreement” means an agreement between a California employer and an insurer under a large deductible program, large risk-rating program, or retrospectively rated program that relates to payments and reimbursements that the insured is contractually obligated to make to the insurer and that includes one or more of the following terms or provisions:

(A) The timing, method, and conditions for making payments to the insurer for amounts imposed by any state or regulatory taxing authority that are made on the insured’s behalf.

(B) The timing, method, and conditions for funding, paying, or reimbursing deductible or retrospectively rated amounts or other policy-related charges due under a policy.

(C) The type and amount of collateral the insured is required to post as security for its obligations.

(D) Payment due dates and transmittal information.

(E) Terms or provisions related to claims administration, including the method for selecting a claims administrator.

(F) Termination and dispute resolution provisions applicable to the collateral and security agreement.

(G) Terms of default under the collateral and security agreement.

(5) “Customized limiting and restricting endorsement” means an endorsement unique to a specific policy used under the following circumstances or for the following purposes:

(A) When the employer’s business is conducted in such a manner that it is impossible or impracticable to determine the nature, scope, and extent of employment covered by the insurer.

(B) To prevent the performance of work in such an extremely hazardous manner or under such hazardous conditions as would reflect a reckless disregard by the employer for the welfare of its employees.

(C) To prevent the issuance of an unrestricted policy if it would encourage an operation that is contrary to law or to the rules of a regulatory agency.

(6) “Limiting and restricting endorsement” means an endorsement that excludes from coverage some portion of workers’ compensation liability for which the employer is required to secure payment pursuant to the Labor Code that, after approval of the endorsement by the Insurance Commissioner, may be endorsed to a workers’ compensation policy.

(h) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

SEC. 2. Section 11658 is added to the Insurance Code, to read:

11658. (a) A workers’ compensation insurance policy or endorsement shall not be issued by an insurer to any person in this state unless the insurer files a copy of the form or endorsement with the rating organization pursuant to subdivision (e) of Section 11750.3 and 30 days have expired from the date the form or endorsement is received by the commissioner from the rating organization without notice from the commissioner, unless the commissioner gives written approval of the form or endorsement prior to that time.

(b) If the commissioner notifies the insurer that the filed form or endorsement does not comply with the requirements of law, specifying the reasons for his or her opinion, it is unlawful for the insurer to issue any policy or endorsement in that form.

(c) The withdrawal of a policy form or endorsement by the commissioner pursuant to this section shall not affect the status of the policyholder as having secured payment for compensation or affect the substitution of the insurer for the policyholder in workers' compensation proceedings as set forth in the provisions of Chapter 4 (commencing with Section 3700) of Part 1 of Division 4 of the Labor Code during the period of time in which the policy form or endorsement was in effect.

(d) This section does not apply to limited policies submitted for approval to the commissioner pursuant to Section 11657.

(e) This section shall become operative on January 1, 2022.

SEC. 3. Section 11658.5 of the Insurance Code is amended to read:

11658.5. (a) (1) An insurer that intends to use a dispute resolution or arbitration agreement to resolve disputes arising in California out of a workers' compensation insurance policy, endorsement, ancillary agreement, or collateral and security agreement, as defined in Section 11658, issued to a California employer shall disclose to the employer, contemporaneously with any written quote that offers to provide insurance coverage, that choice of law and choice of venue or forum may be a jurisdiction other than California and that these terms are negotiable between the insurer and the employer. The disclosure shall be signed by the employer as evidence of receipt if the employer accepts the offer of coverage from that insurer.

(2) After compliance with paragraph (1), a dispute resolution or arbitration agreement may be negotiated by the insurer and the employer before any dispute arises.

(b) Nothing in this section is intended to interfere with any authority granted to the Insurance Commissioner under current law.

(c) Failure by the insurer to observe the requirements of subdivision (a) shall result in a default to California as the choice of law and forum for resolution of disputes arising in California.

(d) For purposes of this section, a "California employer" means an employer whose principal place of business is in California and

whose California payroll constitutes the majority of the employer's payroll for purposes of determining premium under the policy.

(e) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

SEC. 4. Section 11658.5 is added to the Insurance Code, to read:

11658.5. (a) (1) An insurer that intends to use a dispute resolution or arbitration agreement to resolve disputes arising in California out of a workers' compensation insurance policy or endorsement issued to a California employer shall disclose to the employer, contemporaneously with any written quote that offers to provide insurance coverage, that choice of law and choice of venue or forum may be a jurisdiction other than California and that these terms are negotiable between the insurer and the employer. The disclosure shall be signed by the employer as evidence of receipt if the employer accepts the offer of coverage from that insurer.

(2) After compliance with paragraph (1), a dispute resolution or arbitration agreement may be negotiated by the insurer and the employer before any dispute arises.

(b) Nothing in this section is intended to interfere with any authority granted to the Insurance Commissioner under current law.

(c) Failure by the insurer to observe the requirements of subdivision (a) shall result in a default to California as the choice of law and forum for resolution of disputes arising in California.

(d) For purposes of this section, a "California employer" means an employer whose principal place of business is in California and whose California payroll constitutes the majority of the employer's payroll for purposes of determining premium under the policy.

(e) This section shall become operative on January 1, 2022.

Approved _____, 2016

Governor